IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7153 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

AHMEDBHAI LATIFBHAI LUHAR

Versus

MODASA NAGARPANCHAYAT

Appearance:

1. Special Civil Application No. 7153 of 2001

NANAVATI ASSOCIATES for Petitioner No. 1-10

MR SA DESAI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1-4

MR KP RAWAL, Ld. AGP for Respondent No. 2-4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 26/08/2002

ORAL JUDGEMENT

1. Rule. Mr.Desai, learned Counsel for respondent

No.1 waives service of notice of rule and Mr.K.P.Rawal, learned AGP for respondents No.2,3 and 4 waives service of notice of rule. With the consent of all the parties, the matter is finally heard today.

2. On behalf of the petitioners, Mr.Gandhi submits that this Court had passed the order on 24-3-2000 in SCA No.5619/1987 and allied matters, whereby the opportunity was given to the petitioners to make application to the appropriate authorities requesting to extend the benefit for allotment of the shops. It is submitted on behalf of the petitioners that the application was made as directed by this Court to the Municipality and the Municipality had applied for allotment of the land for the purpose of construction of shopping centre on the ground that the shops can be allotted. It has been submitted that the representation is till today not decided and the land was allotted for the purpose of construction of the shopping centre and the petitioners are similarly situated and they are ready to abide by the terms and conditions, which may be fixed by the Municipality and which is made applicable to the other similarly situated persons. However, Mr.Gandhi submits that since no decision was taken and in the meantime the allotment process had started, the present petition.

3. On behalf of the respondent No.1, Mr.Desai has fairly admitted that the representation of the petitioners is not decided till today. However, he submits that the petitioners are asserting that they must be allotted shops at a particular shopping centre, which has been constructed over a place where the petitioners had cabins. when it was put to Mr.Desai regarding the criteria for allotment of the shops by the Municipality to the past cabin holders, Mr.Desai submitted that as such there is no criteria, but the Municipality will not have any objection if the petitioners are ready to be abided by the terms and conditions which may be fixed by the Municipality and if ultimately it is found by the Municipality that the petitioners are similarly situated.

4. Considering the above, it appears that when this Court had given directions to the authority to decide the representation, it was necessary for the Municipality to take decision upon the representation of the petitioners, which has been made pursuant to the order by this Court. That apart, in the matter of disposal of a public property, may be the shops in the shopping centre, it is obligatory for the statutory body to take a rational view of the matter and if the persons are similarly situated and if the properties are available, the equal

opportunity should be given to all concerned since the representation is not finally decided, I am not expressing any opinion, but while considering the representation of the petitioners, aforesaid observations shall be taken into consideration by the authority and if ultimately it is found that the petitioners are similarly situated and the petitioners are also ready and willing to abide by the terms and conditions which may be fixed by the Municipality, the matter may be considered accordingly, in accordance with law.

5. In view of the above, I am of the view that the following directions would meet with the ends of justice:

5.1 The representation of the petitioners which is pending before respondent No.1 authority shall be considered and decided by the Municipality within a period of one month from the date of receipt of the order of this court.

5.2 Until the representation is finally decided and it is communicated to the petitioners by registered A.D. Post, the interim relief granted by this Court shall continue to remain in operation.

6. The petition is allowed to the aforesaid extent. Rule is made absolutely accordingly. There shall be no order as to costs.

26-8-2002 (Jayant Patel, J.)

vinod